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DECISION



20779

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-206301

DATE: February 10, 1982

MATTER OF: Voyager Emblems, Inc.

DIGEST:

1. GAO does not consider the legal status of a firm as a regular dealer or a manufacturer within the meaning of the Walsh-Healey Act. By law this matter is to be determined by the contracting agency in the first instance, subject to review by the Small Business Administration (if a small business is involved) and the Secretary of Labor.
2. The financial capability of a firm to perform a contract involves that firm's responsibility. GAO does not review affirmative determinations of responsibility unless there has been either a showing of fraud on the part of procurement officials or an allegation that the solicitation contains definitive responsibility criteria that have not been applied. A negative determination of a small business' responsibility must be referred to the Small Business Administration under that agency's certificate of competency procedures.

Voyager Emblems, Inc. protests the award of a contract for shoulder insignia to Daal Trimming and Emblem Co. under Defense Logistics Agency Solicitation No. 100-81-B-1484. Voyager questions Daal's status as a regular dealer under the terms of the Walsh-Healey Act, 41 U.S.C. § 35-45 (1976), as well as Daal's financial ability to perform the contract. We dismiss this protest.

This Office does not consider the legal status of a firm as a regular dealer or a manufacturer within the meaning of the Walsh-Healey Act. By law this matter is to be determined by the contracting agency in the first instance, subject to review by the Small Business Administration (SBA) (if a small business is involved) and the Secretary of Labor. Gillette Industries, Inc., B-204232, August 13, 1981, 81-2 CPD 139.

We also do not consider a contracting officer's affirmative determination of a firm's responsibility (which is the question involved in the issue of a bidder's financial capability to perform a contract) unless there is a showing of fraud on the part of procurement officials or the solicitation contains definitive responsibility criteria that allegedly have not been applied. Langfur Construction Corporation, B-204380, September 4, 1981, 81-2 CPD 201. Neither exception has been alleged.

Finally, we point out that if the contracting officer finds Daal to be nonresponsible, the law requires that the matter be referred to the Small Business Administration under that agency's certificate of competency procedures. The Small Business Administration has conclusive authority to determine all matters of a small business firm's responsibility if it has been found to be nonresponsible by the contracting officer. Capitol Ambulance Service, Inc., B-200770, September 23, 1981, 81-2 CPD 244.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel